

LS 44 (Rev. 06/17)

## **CIVIL COVER SHEET**

17-CV-2733

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<b>I. (a) PLAINTIFFS</b> PENSION BENEFIT GUARANTY CORPORATION		<b>DEFENDANTS</b> FAY CONSTRUCTION CO., INC., <b>17</b> <b>2733</b> as Plan Administrator for the Fay Construction Co., Inc. Pension Plan					
(b) County of Residence of First Listed Plaintiff <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i>		County of Residence of First Listed Defendant <b>Delaware County</b> <i>(IN U.S. PLAINTIFF CASES ONLY)</i>					
(c) Attorneys ( <i>Firm Name, Address, and Telephone Number</i> ) Ralph L. Landy, Esq. 1200 K Street, N.W., Washington, D.C. 20005 (T)(202) 326-4020, x 3090 (F) (202) 326-4112 (E) landy.ralph@pbgc.gov		NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.					
<b>II. BASIS OF JURISDICTION</b> <i>(Place an "X" in One Box Only)</i>		<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i>					
<input checked="" type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 3 Federal Question ( <i>U.S. Government Not a Party</i> )		<b>PTF</b> <b>DEF</b> Citizen of This State <input type="checkbox"/> 1 <input type="checkbox"/> 1 Incorporated or Principal Place of Business In This State <b>PTF</b> <b>DEF</b> Citizen of Another State <input type="checkbox"/> 2 <input type="checkbox"/> 2 Incorporated and Principal Place of Business In Another State <b>PTF</b> <b>DEF</b> Citizen or Subject of a Foreign Country <input type="checkbox"/> 3 <input type="checkbox"/> 3 Foreign Nation <b>PTF</b> <b>DEF</b>					
<b>IV. NATURE OF SUIT</b> <i>(Place an "X" in One Box Only)</i>		Click here for: Nature of Suit Code Descriptions.					
<b>CONTRACT</b>	<b>TORTS</b>	<b>FORFEITURE/PENALTY</b>	<b>BANKRUPTCY</b>	<b>OTHER STATUTES</b>			
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/ Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act		
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<b>PRISONER PETITIONS</b>	<b>LABOR</b>	<b>SOCIAL SECURITY</b>			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 710 Fair/Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))			
			<b>FEDERAL TAX SUITS</b>				
			<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609				
<b>V. ORIGIN</b> <i>(Place an "X" in One Box Only)</i>							
<input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from Another District (specify) <input type="checkbox"/> 6 Multidistrict Litigation - Transfer <input type="checkbox"/> 8 Multidistrict Litigation - Direct File							
<b>VI. CAUSE OF ACTION</b>		Cite the U.S. Civil Statute under which you are filing ( <i>Do not cite jurisdictional statutes unless diversity</i> ): 29 U.S.C. §§ 1342 and 1348(a)					
Brief description of cause: To terminate the Pension Plan.							
<b>VII. REQUESTED IN COMPLAINT:</b>		<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.		<b>DEMAND \$</b>	CHECK YES only if demanded in complaint: <b>JURY DEMAND:</b> <input type="checkbox"/> Yes <input type="checkbox"/> No		
<b>VIII. RELATED CASE(S) IF ANY</b>		(See instructions):		JUDGE	DOCKET NUMBER		
DATE	6/14/17		SIGNATURE OF ATTORNEY OF RECORD		JUN 16 2017		
FOR OFFICE USE ONLY		RECEIPT #		AMOUNT		APPLYING IFFP	
				JUDGE		MAG. JUDGE	

**GEKP**

## UNITED STATES DISTRICT COURT

17

2733

**FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.**

Address of Plaintiff: Pension Benefit Guaranty Corporation, 1200 K Street, N.W., Washington, D.C. 20005

Address of Defendant: Fay Construction Co., Inc., 110 Wilton Woods Lane, Media, PA 19063

Place of Accident, Incident or Transaction: Defendant's place of business is at 110 Wilton Woods Lane, Media, PA 19063.  
(Use Reverse Side For Additional Space)Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?  
(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))Yes  No 

Does this case involve multidistrict litigation possibilities?

Yes  No **RELATED CASE, IF ANY:**

Case Number: \_\_\_\_\_ Judge: \_\_\_\_\_ Date Terminated: \_\_\_\_\_

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?  
Yes  No
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?  
Yes  No
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?  
Yes  No
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?  
Yes  No

**CIVIL: (Place ✓ in ONE CATEGORY ONLY) \*\*Plaintiff is Federal Government\*\*****A. Federal Question Cases:**

1.  Indemnity Contract, Marine Contract, and All Other Contracts
2.  FELA
3.  Jones Act-Personal Injury
4.  Antitrust
5.  Patent
6.  Labor-Management Relations
7.  Civil Rights
8.  Habeas Corpus
9.  Securities Act(s) Cases
10.  Social Security Review Cases
11.  All other Federal Question Cases  
(Please specify) ERISA

**B. Diversity Jurisdiction Cases:**

1.  Insurance Contract and Other Contracts
2.  Airplane Personal Injury
3.  Assault, Defamation
4.  Marine Personal Injury
5.  Motor Vehicle Personal Injury
6.  Other Personal Injury (Please specify)  
(Please specify) \_\_\_\_\_
7.  Products Liability
8.  Products Liability — Asbestos
9.  All other Diversity Cases

I, Ralph L. Landy, counsel of record do hereby certify:

 Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs; Relief other than monetary damages is sought.DATE: 6/14/2017**ARBITRATION CERTIFICATION**

(Check Appropriate Category)

Ralph L. Landy  
Attorney-at-LawPA #41384

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 6/14/2017Ralph L. Landy  
Attorney-at-LawPA #41384

Attorney I.D.#

JUN 16 2017

**GEKP**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**CASE MANAGEMENT TRACK DESIGNATION FORM**

PENSION BENEFIT GUARANTY  
CORPORATION

CIVIL ACTION

17 2733

v.  
FAY CONSTRUCTION CO., INC.

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( )
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ( )
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

6/16/17

Date

(202) 326-4020 x3090

Telephone

Ralph L. Landy

Attorney-at-law

(202) 326-4112

FAX Number

Pension Benefit Guaranty Corporation

Attorney for

Landy, ralph@pbgc.gov

E-Mail Address

(Civ. 660) 10/02

JUN 16 2017

**Civil Justice Expense and Delay Reduction Plan**  
**Section 1:03 - Assignment to a Management Track**

- (a) The clerk of court will assign cases to tracks (a) through (d) based on the initial pleading.
- (b) In all cases not appropriate for assignment by the clerk of court to tracks (a) through (d), the plaintiff shall submit to the clerk of court and serve with the complaint on all defendants a case management track designation form specifying that the plaintiff believes the case requires Standard Management or Special Management. In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.
- (c) The court may, on its own initiative or upon the request of any party, change the track assignment of any case at any time.
- (d) Nothing in this Plan is intended to abrogate or limit a judicial officer's authority in any case pending before that judicial officer, to direct pretrial and trial proceedings that are more stringent than those of the Plan and that are designed to accomplish cost and delay reduction.
- (e) Nothing in this Plan is intended to supersede Local Civil Rules 40.1 and 72.1, or the procedure for random assignment of Habeas Corpus and Social Security cases referred to magistrate judges of the court.

**SPECIAL MANAGEMENT CASE ASSIGNMENTS**  
**(See §1.02 (e) Management Track Definitions of the**  
**Civil Justice Expense and Delay Reduction Plan)**

Special Management cases will usually include that class of cases commonly referred to as "complex litigation" as that term has been used in the Manuals for Complex Litigation. The first manual was prepared in 1969 and the Manual for Complex Litigation Second, MCL 2d was prepared in 1985. This term is intended to include cases that present unusual problems and require extraordinary treatment. See §0.1 of the first manual. Cases may require special or intense management by the court due to one or more of the following factors: (1) large number of parties; (2) large number of claims or defenses; (3) complex factual issues; (4) large volume of evidence; (5) problems locating or preserving evidence; (6) extensive discovery; (7) exceptionally long time needed to prepare for disposition; (8) decision needed within an exceptionally short time; and (9) need to decide preliminary issues before final disposition. It may include two or more related cases. Complex litigation typically includes such cases as antitrust cases; cases involving a large number of parties or an unincorporated association of large membership; cases involving requests for injunctive relief affecting the operation of large business entities; patent cases; copyright and trademark cases; common disaster cases such as those arising from aircraft crashes or marine disasters; actions brought by individual stockholders; stockholder's derivative and stockholder's representative actions; class actions or potential class actions; and other civil (and criminal) cases involving unusual multiplicity or complexity of factual issues. See §0.22 of the first Manual for Complex Litigation and Manual for Complex Litigation Second, Chapter 33.



**GEKP**  
Pension Benefit Guaranty Corporation  
1200 K Street, N.W., Washington, D.C. 20005-4026

JUN 14 2017

**FEDERAL EXPRESS**

17 2733

United States District Court  
Eastern District of Pennsylvania  
U.S. Courthouse  
601 Market Street, Room 2609  
Philadelphia, PA 19106-1797

Re: *Fay Construction Co., Inc. v. Pension Benefit Guaranty Corporation*

Dear Sir/Madam:

The Pension Benefit Guaranty Corporation ("PBGC") is a wholly-owned United States Government corporation created by Title IV of the Employee Retirement Income Security Act of 1974, *as amended*, 29 U.S.C. §§ 1301-1461 (2012 & Supp. II 2014) ("ERISA"), and an agency of the United States government under 28 U.S.C. § 451, thus we are exempt from filing fees.

Please find enclosed for filing an original and a copy of the Designation Form, and an original copy of the Civil Cover Sheet, Complaint for Pension Plan Termination, and two (2) summonses, as well as, a disk with a pdf file of all the documents. After filing, please kindly return the file-stamp copies in the enclosed pre-paid FedEx envelope.

Please feel free to contact me at (202) 326-4020, ext. 3736, or li.michelle@pbgc.gov, if you have any questions about the Complaint. Should you have any case-related concerns, please contact Attorney Ralph Landy at (202) 326-4020, ext. 3090 or by email at landy.ralph@pbgc.gov

Sincerely,

A handwritten signature in black ink, appearing to read "ML".

Michelle Li  
Paralegal Specialist  
Office of the Chief Counsel

Enclosures

JUN 15 2017

**GEKP**  
UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PENSION BENEFIT GUARANTY CORPORATION )  
1200 K Street, NW )  
Washington, DC 20005 )  
Plaintiff, )  
v. )  
FAY CONSTRUCTION CO., INC. )  
as Plan Administrator for the )  
Fay Construction Co., Inc. Pension Plan )  
110 Wilton Woods Lane )  
Media, Pennsylvania 19063 )  
Defendant. )

**17 2733**

Civil Action No.

**COMPLAINT FOR PENSION PLAN TERMINATION**

This action arises under Title IV of the Employee Retirement Income Security Act of 1974, *as amended*, 29 U.S.C. §§ 1301-1461 (2012 and Supp. II 2014) (“ERISA”). Plaintiff, Pension Benefit Guaranty Corporation (“PBGC”), brings this action, pursuant to 29 U.S.C. §§ 1342 and 1348(a), seeking an order (a) terminating the Fay Construction Co., Inc. Pension Plan (the “Pension Plan”); (b) appointing PBGC as statutory trustee of the Pension Plan; (c) establishing June 14, 2017, as the termination date of the Pension Plan; and (d) directing the defendant and any other person or entity having possession, custody, or control of any of the records, assets, or other property of the Pension Plans to transfer, convey and deliver all such records, assets, and property to PBGC, as the statutory trustee upon request under 29 U.S.C. § 1342(d)(1). Under 29 U.S.C. § 1342, PBGC must bring this action because it has determined that the Pension Plan does not have assets available to pay benefits which are currently due under the Pension Plan, risking the interruption of timely benefit payments to the Pension Plan’s retired participants.

**JURISDICTION AND VENUE**

1. This Court has exclusive jurisdiction of this action pursuant to 29 U.S.C. §§ 1303(e)(3) and 1342(e) and (f).
2. Venue lies in this Court under 29 U.S.C. §§ 1303(e)(2) and 1342(g).

**PARTIES**

3. Plaintiff is a wholly owned United States government corporation established under 29 U.S.C. §1302(a) to administer the pension plan termination insurance program created under Title IV of ERISA. When an underfunded pension plan terminates, PBGC ensures the timely and uninterrupted payment of statutorily guaranteed pension benefits to plan participants and their beneficiaries. 29 U.S.C. §§ 1302(a)(2), 1321, 1322.

4. Defendant, Fay Construction Co., Inc. ("Fay"), is a corporation organized under the laws of Delaware. On information and belief, Fay's principal place of business is located at 110 Wilton Woods Lane, Media, Pennsylvania, 19063, in Delaware County.

**THE PENSION PLANS**

5. The Pension Plan is a single-employer defined benefit pension plan and is covered under Title IV of ERISA. 29 U.S.C. §§ 1002(35), 1301(a)(15), 1321(a).

6. Fay is the contributing sponsor of the Pension Plan within the meaning of 29 U.S.C. § 1301(a)(13).

7. On information and belief, Fay is the Plan administrator of the Pension Plan within the meaning of 29 U.S.C. §§ 1003(16) and 1301(a)(1).

8. The Pension Plan provides pension benefits to certain present and former employees of Fay and to their beneficiaries. On information and belief, the Pension Plan has four participants, one of whom is retired. PBGC estimates that as of June 14, 2017, the Pension Plan does not have assets available to pay benefits that are currently due to participants.

9. On information and belief, Fay administered the Pension Plan at its offices in Media, Pennsylvania.

**CAUSE OF ACTION**

10. On April 3, 2017, PBGC received notice from the Philadelphia regional director of the Employee Benefit Security Administration (“EBSA”), stating that a participant in the Pension Plan complained to EBSA that he did not receive benefit payments from the Pension Plan for two months in 2015.

11. Based on its own investigation and information received from EBSA’s senior investigator, PBGC determined that the participant in the Pension Plan who is currently receiving pension benefits (“Eligible Participant”) is being paid through Fay’s “working capital” account at Merrill Lynch (“Working Capital Account”), and that the current balance in the Working Capital Account is not sufficient to cover the next pension benefit payments due to the Eligible Participant.

12. Neither PBGC nor EBSA could determine if the Pension Plan has any assets in its own accounts.

13. On information and belief, on several occasions, Merrill Lynch has covered overdrafts in the Working Capital Account to allow payments to the Eligible Participant.

14. The next benefit payment to the Eligible Participant is due June 15, 2017.

15. Under 29 U.S.C. § 1342, PBGC must commence proceedings to terminate a plan as soon as practicable after PBGC determines that the plan does not have assets available to pay benefits which are currently due under the terms of the plan.

16. PBGC has determined, pursuant to 29 U.S.C. §§ 1342, that the Pension Plan does not have assets available to pay benefits which are currently due under the terms of the Pension Plan. PBGC also has determined that the Pension Plan's termination date should be June 14, 2017.

17. On June 13, 2017, in accordance with 29 U.S.C. § 1342(c), PBGC issued a Notice of Determination (the "Notice") to Fay, as plan administrator of the Pension Plan, notifying Fay that PBGC had determined that the Pension Plan does not have assets available to pay benefits which are currently due under the terms of the Pension Plan, and that PBGC must therefore commence proceedings to terminate the Pension Plan as soon as practicable. The Notice stated that the Pension Plan's termination date is June 14, 2017. A copy of the Notice is attached hereto as Exhibit 1.

18. On June 13, 2017, PBGC sent a copy of the Notice to each participant by overnight mail at his or her last known address.

19. Under 29 U.S.C. § 1342(c), a district court may order the termination of a pension plan if necessary to protect the interests of participants, to avoid any unreasonable deterioration of the financial condition of the plan, or to avoid any unreasonable increase in liability to the PBGC insurance fund.

20. PBGC has determined that termination of the Pension Plan is necessary to protect the interests of participants.

21. Under 29 U.S.C. § 1348(a)(4), a district court establishes the date of termination of a pension plan covered by Title IV when PBGC and the plan administrator have not agreed on a date of termination.

22. As of the filing of this Complaint, PBGC and the Pension Plan administrator have not agreed on a date of plan termination.

23. June 14, 2017, should be established as the date of plan termination of the Pension Plan pursuant to 29 U.S.C. § 1348(a)(4), because by that date, the Pension Plan's participants received actual or constructive notice of the Pension Plan termination, and they no longer had any justifiable expectations of the Pension Plan's continuation.

24. Under 29 U.S.C. § 1342(c), a trustee for a pension plan shall be appointed by the court upon granting a decree of plan termination. Further, 29 U.S.C. § 1342(c) provides that PBGC may request that it be appointed as trustee of a plan in any case.

25. The PBGC is ready, willing, and able to serve as statutory trustee of the Pension Plan.

**RELIEF REQUESTED**

WHEREFORE, PBGC respectfully requests that this Court grant judgment for PBGC and issue an order granting the following relief:

1. Adjudicating the Pension Plan terminated, pursuant to 29 U.S.C. § 1342(c);
2. Appointing PBGC statutory trustee of the Pension Plan, pursuant to 29 U.S.C. § 1342(c);
3. Establishing June 14, 2017, as the termination date of the Pension Plan, pursuant to 29 U.S.C. § 1348(a)(4);
4. Directing Fay and any other person or entity having possession, custody, or control of any records, assets, or other property of the Pension Plan, to transfer, convey, and deliver all such records, assets, and property to PBGC as statutory trustee upon request, pursuant to 29 U.S.C. § 1342(d)(1); and

5. Granting such other relief as this Court deems just and proper.

Dated: Washington, D.C.  
June 14, 2017

Respectfully submitted,

  
Ralph L. Landy

ISRAEL GOLDOWITZ

Chief Counsel

KARTAR KHALSA

Deputy Chief Counsel

C. WAYNE OWEN

Assistant Chief Counsel

RALPH L. LANDY (PA Bar # 41384)

Attorney

PENSION BENEFIT GUARANTY  
CORPORATION

Office of the Chief Counsel

1200 K Street, N.W.

Washington, D.C. 20005-4026

Phone: (202) 326-4020, ext. 3090

Fax: (202) 326-4112

E-mail: landy.ralph@pbgc.gov &  
efile@pbgc.gov

# Exhibit 1



Pension Benefit Guaranty Corporation  
1200 K Street, N.W., Washington, D.C. 20005-4026

EIN/PN: 510309859/001

Mr. Steven Fay  
President  
Fay Construction Co., Inc.  
110 Wilton Woods Lane  
Media, PA 19063

PBGC Case Number: 23103800

Plan Name: *Fay Construction Company, Inc.*  
*Pension Plan*

**NOTICE OF DETERMINATION**

PLEASE TAKE NOTICE that the Pension Benefit Guaranty Corporation ("PBG") has determined under section 4042(a) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. § 1342(a) that the Fay Construction Company, Inc. Pension Plan ("Plan") does not have assets available to pay benefits which are currently due under the terms of the Plan. PBGC has further determined, under ERISA § 4042(c), 29 U.S.C. § 1342(c), that the Plan must be terminated in order to protect the interests of the Plan's participants. Accordingly, PBGC intends to proceed under ERISA § 4042, 29 U.S.C. § 1342, to have the Plan terminated and PBGC appointed as statutory trustee, and under ERISA § 4048, 29 U.S.C. § 1348, to have June 14, 2017 established as the Plan's termination date.

PBGC has completed its decision-making process in this matter; accordingly, this determination is effective on the date it is issued.

PENSION BENEFIT GUARANTY CORPORATION

Andrea Sobeide